

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>UNITED STATES OF AMERICA</b>	§	
	§	<b>H-15-295</b>
<b>v.</b>	§	
	§	
	§	
<b>HERIBERTO LATIGO,</b>	§	

**UNITED STATES RESPONSE TO  
DEFENDANT’S MOTION FOR RETURN OF PROPERTY**

The United States of America, by and through Kenneth Magidson, United States Attorney, Sherri L. Zack, Assistant U.S. Attorney, requests the Court to deny the Defendant’s motion to return property as moot and would state as follows:

***I. Procedural History***

A. On May 28, 2015, a grand jury seated in Houston returned an indictment charging defendant Heriberto Latigo with one count of Stalking under 18 U.S.C § 2261(A). Stalking is punishable by up to five years in prison.

B. The Indictment alleges that the defendant, between March 1, 2014, through April 14, 2015, engaged in a pattern of activity intended to injure, harass, and intimidate Victim 1 by using the internet to cause Victim 1 substantial emotional distress.

C. On June 5, 2015, Latigo appeared for a detention hearing before the Honorable Nancy K Johnson. The Court entered a detention order (Dkt. # 17) finding that pursuant to subsection (f)(2) of 18 U.S.C. § 3142, the Bail Reform Act, that:

- (1) Defendant is charged with stalking a former girlfriend via the internet and in person.
- (2) There is a serious risk that the defendant will flee.
- (3) Defendant has stalked and threatened other women.
- (4) There is a serious risk that the defendant will obstruct justice, threaten, injure, or intimidate a prospective witness, or attempt to do so.

D. Discovery has been on-going in this case.

E. During the search of the Defendant's home on April 15, 2015, pursuant to a federal search warrant, signed by U.S. Magistrate Judge Frances Stacy on April 14, 2015, all of the Defendant's electronics, including his cellular phones, were seized.

F. Between April 15, and May 30, 2015, the date of his arrest, Defendant Latigo obtained a new cellular phone. That phone was used by Latigo to record his arrest after he refused to open his door for law enforcement causing them to have to force entry into his home. The phone in question was seized incident to arrest, but never searched.

G. When Latigo filed his motion for return of said phone, law enforcement, realized they had never searched the phone. The fact that Latigo

used his previous phones to terrorize the victim via manipulation of social media and other smart phone applications created probable cause to believe he would continue those activities after the search but prior to his arrest. Based on the information learned during the investigation, the lead investigator applied for a search warrant for the phone in question.

H. The federal search warrant was presented to and signed by U.S. Magistrate Nancy K. Johnson on May 26, 2016. That warrant is sealed and pursuant to an order to disclose will be made available as part of the United States on-going discovery obligation.

I. The phone is now at the Greater Houston Regional Computer Forensics Lab being analyzed.

## ***II. Conclusion***

The Defendant premised his motion on the idea that the phone was illegally seized at the time of his arrest. The phone was not illegally seized. Defendant has not provided, pursuant to Rule 41(g) any facts to support that the phone was handled illegally. The Defendant further alleges the phone is not the subject of a search warrant. That is not the case. The phone is now being searched pursuant to a search warrant reviewed by U.S. Magistrate Nancy K. Johnson. Judge Johnson was aware of the facts and circumstances surrounding the seizure of the phone. Had Judge Johnson thought it was obtained illegally, she could have refused to

authorize the search. Based on the change of circumstances surrounding the phone, it is the United States' position that Defendant's motion is moot and should therefore be denied.

Respectfully submitted,

/s/ Sherri L. Zack

Sherri L. Zack

Assistant United States Attorney

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**CERTIFICATE OF SERVICE**

I certify that on May 31, 2016, a copy of this filing was provided to counsel for defendant via electronic filing.

/s/ Sherri L. Zack  
Assistant United States Attorney



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**ORDER**

The defendant's motion to return his iPhone is denied.

Signed on \_\_\_\_\_.

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Kenneth M. Hoyt  
United States District Judge